

STEVEN L. MAYER (No. 62030)  
 SHARON D. MAYO (No. 150469)  
 JEREMY T. KAMRAS (No. 237377)  
 ARNOLD & PORTER KAYE SCHOLER LLP  
 Three Embarcadero Center, 10th Floor  
 San Francisco, California 94111-4024  
 Telephone: (415) 471-3100  
 Facsimile: (415) 471-3400  
 Email: steven.mayer@aporter.com  
 sharon.mayo@aporter.com

DIANA STERK (admitted *pro hac vice*)  
 ARNOLD & PORTER KAYE SCHOLER LLP  
 250 West 55th Street  
 New York, NY 10019-9710  
 Telephone: (212) 836-8000  
 Email: diana.sterk@arnoldporter.com

RHONDA R. TROTTER (No. 169241)  
 OSCAR RAMALLO (No. 241487)  
 ARNOLD & PORTER KAYE SCHOLER LLP  
 777 S. Figueroa Street, 44th Floor  
 Los Angeles, California 90017  
 Telephone: (213) 243-4000  
 Email: rhonda.trotter@arnoldporter.com  
 oscar.ramallo@arnoldporter.com

Attorneys for Plaintiffs

BETH H. PARKER (No. 104773)  
 PLANNED PARENTHOOD NORTHERN  
 CALIFORNIA  
 2185 Pacheco Street  
 Concord, California 94520  
 Telephone: (415) 531-1791  
 Email: beth.parker@ppnorcal.org

HELENE T. KRASNOFF  
 (admitted *pro hac vice*)  
 PLANNED PARENTHOOD FEDERATION  
 OF AMERICA  
 1110 Vermont Avenue, NW, Suite 300  
 Washington, DC 20005-6300  
 Telephone: (202) 973-4800  
 Email: helene.krasnoff@ppfa.org

AMY L. BOMSE (No. 218669)  
 ROGERS JOSEPH O'DONNELL  
 311 California St., 10th Floor  
 San Francisco, California 94104  
 Telephone: (415) 956-2828  
 Email: ABomse@rjo.com

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

PLANNED PARENTHOOD FEDERATION OF  
 AMERICA, INC.; PLANNED PARENTHOOD:  
 SHASTA-DIABLO, INC., ET AL.

Plaintiffs,

v.

CENTER FOR MEDICAL PROGRESS, ET AL.,

Defendants.

Case No. 3:16-cv-00236-WHO

**PLAINTIFFS' OBJECTIONS TO  
 DEFENDANTS'  
 DEMONSTRATIVES FOR  
 OPENING STATEMENTS**

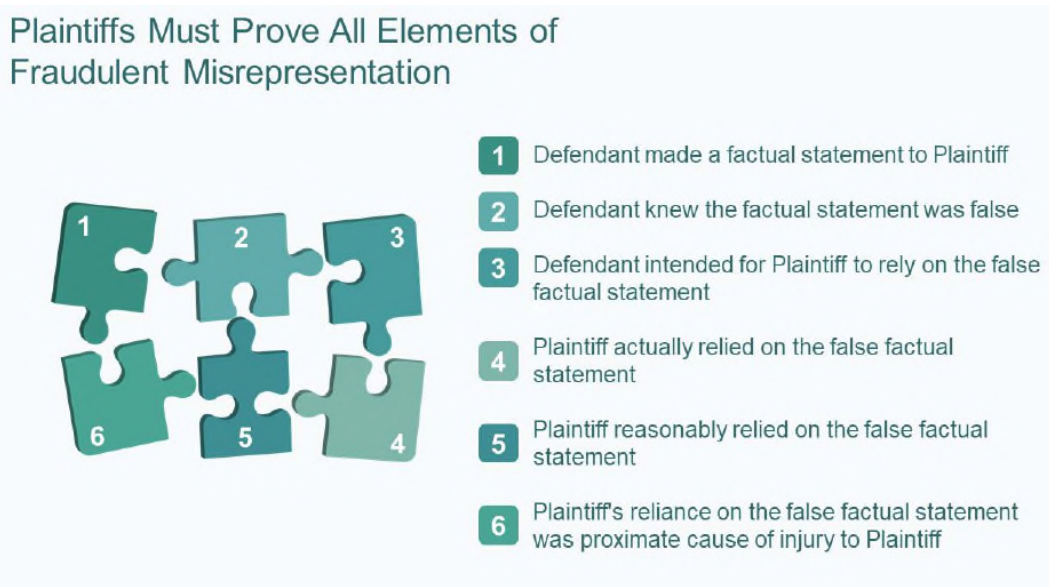
Judge: Hon. William H. Orrick, III

Trial Date: October 2, 2019

Pursuant to the Court's Order, Dkt. 721, Plaintiffs Planned Parenthood Federation of America, Inc.; Planned Parenthood: Shasta-Diablo, Inc. dba Planned Parenthood Northern California; Planned Parenthood Mar Monte, Inc.; Planned Parenthood of the Pacific Southwest; Planned Parenthood Los Angeles; Planned Parenthood/Orange and San Bernardino Counties, Inc.; Planned Parenthood California Central Coast; Planned Parenthood Pasadena and San Gabriel Valley, Inc.; Planned Parenthood of the Rocky Mountains; Planned Parenthood Gulf Coast; and Planned Parenthood Center for Choice ("Plaintiffs") respectfully submit to the Court Plaintiffs' objections to the demonstratives for opening statements provided by Defendants to Plaintiffs on October 2, 2019.

Defendants sent Plaintiffs another set of demonstratives on October 2, 2019 that included some new information and language. Although Plaintiffs informed Defendants of the below issues in the late evening on October 1, 2019 as it took time to go through the new slides, Defendants did not respond by midnight. Therefore, some of the below issues may be mooted if Defendants will agree to make the changes. Below are Plaintiffs' outstanding objections to Defendants' demonstratives. For ease of reference, Plaintiffs are inserting the slide images below.

#### A. Slide on Fraudulent Misrepresentation

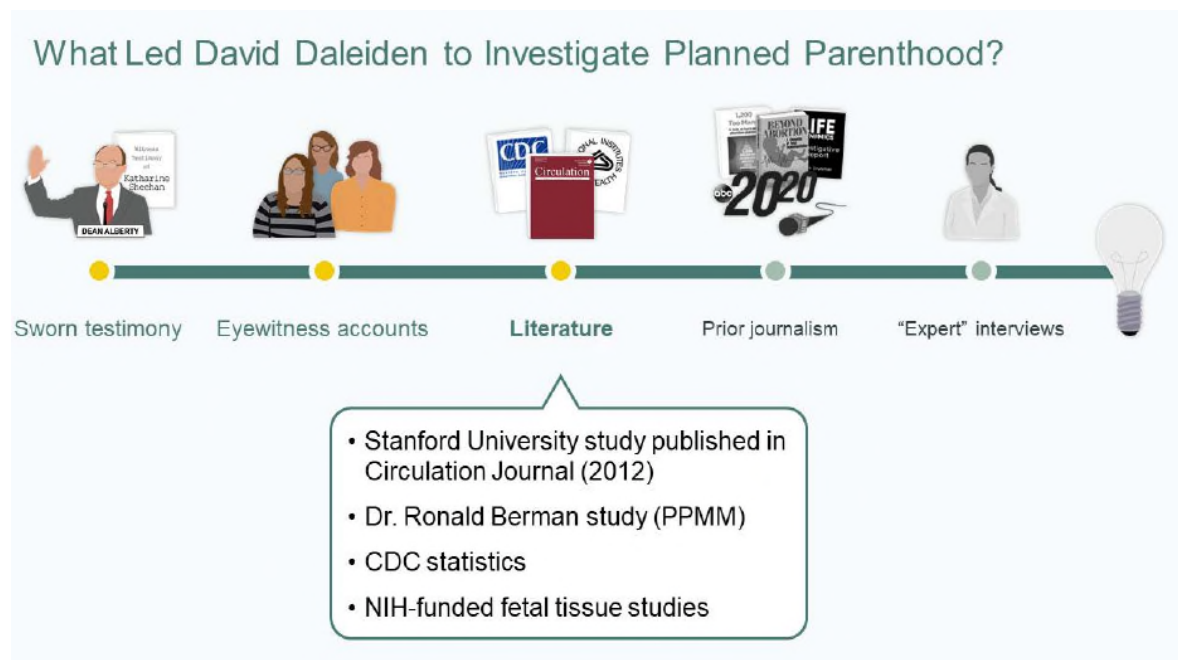


Defendants indicated that they "thought that the judge just excluded the marked up versions, and not the unmarked version," so they may still want to use it. Plaintiffs object to use of this slide,

and believe that the Court has excluded it. Defendants suggested as a potential alternative that they may “tak[e] out the specific elements and the fraudulent misrepresentation claim, keeping the puzzle piece, and just stating generically, element 1, element 2... etc.” Plaintiffs responded that if Defendants “plan to remove all elements and just keep the puzzle icon, we do not have objections to the slide itself,” but expressed concern that Defendants’ proposed approach still sounded problematic and may force objections during opening statement.

### B. New Literature

In the slide on literature, Defendants amended it to include a listing for “NIH-funded fetal tissue studies.” Defendants did not mention NIH in their depositions or in the interrogatory response on this topic. Plaintiffs do not know what studies they intend to refer to with this slide, and as with other late-disclosed evidence, request the Court exclude it.



### C. Incorrect Plaintiffs and Defendants

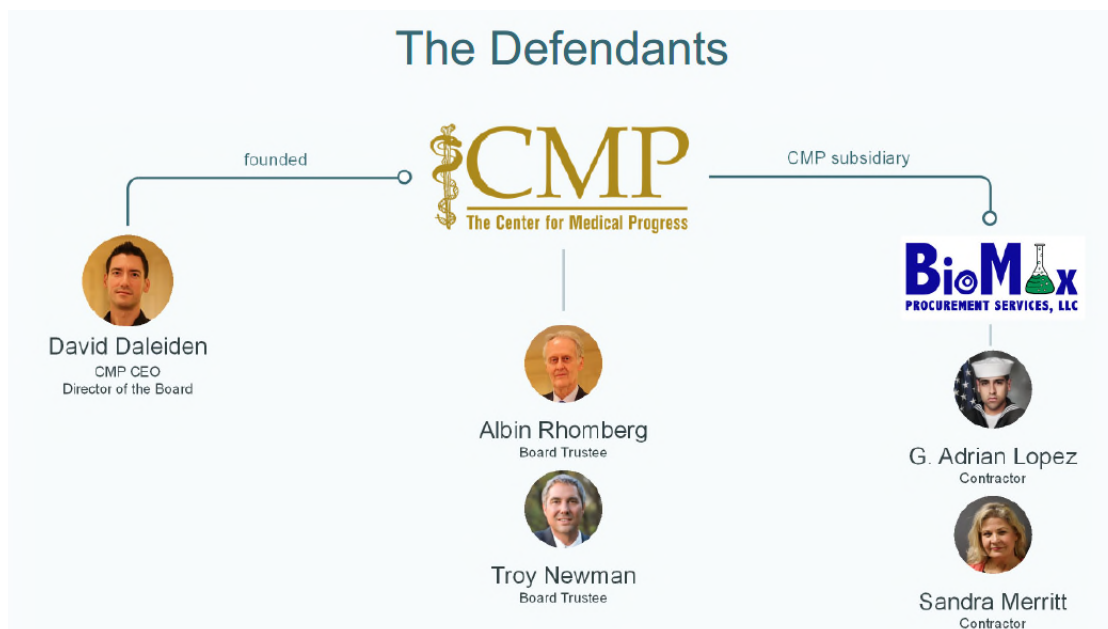
Defendants’ slides listing plaintiffs and defendants for different claims contain several errors. They only show PPFA as having a fraudulent representation claim. PPPSGV and PPGC

also have fraudulent representation claims. They omit Merritt as a defendant for the 2015 breach of NAF agreements.



#### D. Lopez and Merritt as Contractors of BioMax

Defendants include the below slide, which lists Adrian Lopez and Sandra Merritt as “contractors” of BioMax. Both signed contract agreements with Center for Medical Progress, not BioMax. There is no evidence that either received paychecks from or signed contractor agreements with BioMax. Therefore, the below slide is argumentative, incorrect and prejudicial.



Dated: October 1, 2019

Respectfully submitted,

ARNOLD & PORTER KAYE SCHOLER LLP

ROGERS JOSEPH O'DONNELL

By: /s/ Sharon Mayo  
SHARON MAYO

Attorneys for Plaintiffs